



**Minutes of the Civil Justice Council Meeting
27 October 2011 10.30 am
E200, Royal Courts of Justice**

Master of the Rolls Lord Neuberger	Chairman	Peter Smith	Member
Lord Justice Moore-Bick	Deputy Chairman	Tim Wallis	Member
HH Graham Jones	Member	Dr Jane Phipps	Member
Mark Harvey	Member	Vicky Ling	Member
Professor Rachael Mulheron	Member	Kate Lotts	Member
Janet Tilley	Member	Abigail Plenty	MOJ
John Pickering	Member	Alex Clark	Secretary to CJC
Colin Stutt	Member	Chris Morris-Perry	Assistant Secretary
John Usher	Member	Peter Farr	Private Secretary to the Master of the Rolls
Deborah Prince	Member	John Sorabji	Legal Secretary to the Master of the Rolls
Duncan Campbell	Member	Jo Gordon	Judicial Office
Amanda Finlay	Member	Andy Caton	Judicial Office
Robin Knowles	Member		

1. Introduction and apologies

Apologies were received from Mr. Justice Alistair MacDuff, District Judge Robert Jordan, and Alistair Kinley.

The Master of the Rolls welcomed Kate Lotts who had been appointed to the Council as the representative from the defendant insurance industry. He also informed the Council that Nicola Mackintosh had submitted her resignation and thanked her for contribution to its work.

The Council noted Nicola's concerns that it had aligned itself too closely to Government for example in regard to the proposed legal aid reforms, and that this could damage the Council's reputation as an independent advisory body. To maintain its credibility with stakeholders, it was agreed that the Council should continue to express views which may be critical of Government policy, where appropriate. However, in doing so, care should be taken that is not seen as simply a lobby group for particular interest groups as this would

reduce its potential to influence Government proposals. The Master of the Rolls also reminded Members that for the Council to function effectively, they should not feel inhibited in expressing their views or serving on Working Parties.

2. Minutes of the last meeting

The minutes of the last meeting of 24th June were approved.

3. Access to Justice – Litigants in Person Report

A draft report from the Working Party was submitted to the Council by Robin Knowles CBE QC, Chair of the Working Party. The Master of the Rolls thanked the WP for its work.

Robin said that the aim was to present the Government with a set of broadly cost-neutral practical actions to support litigants in person who would be denied access to representation under the proposed legal aid reforms. The recommendations had been prioritised, and where possible lead agencies had been identified to take them forward. A communications plan was in place for the launch of the Report.

In the light of the earlier discussion it was agreed that in presenting the report to the Government, the Council should make clear its reservations about the effect of the legal aid proposals on litigants in person and that the recommendations in the report were not a panacea. [The final Report was submitted to Government on 31 October.]

4. Protocol on Experts on Evidence

The Master of the Rolls informed the Council that he had announced to the Expert Witness Institute Conference that the Expert's Protocol, first published in 2005, needed revision. At the previous Executive Committee, John Pickering had agreed to chair a Working Party to consider changes to the Protocol. The Council noted developments.

5. CJC Planning and Projects

In view of concerns raised over the effects of a significant under spend this year on next year's budget allocation and CJC activity, the Executive Committee had decided to ask the Council to consider setting up a Planning and Projects Committee.

The Secretary submitted a paper setting out the EC's proposals for discussion. He said that there needed to be a clear process for identifying priorities and selecting projects for funding. To this end, it was recommended that a small sub-committee of the Executive Committee be formed to carry out this function. Doubts were raised by some Members over the need for such an arrangement as they felt that these were core functions of the EC. However, others felt that it was not appropriate for the EC to identify, propose and endorse projects. Following further discussion, it was agreed that a sub-committee would be set up to run for a trial period. Kate Lotts, Amanda Finlay, John Usher and Dr Jane Phipps volunteered to serve on the Committee. The

Secretary agreed to circulate a governance and operations paper for consideration by the Committee.

6. Communications Strategy

At the previous Council meeting, it was agreed that the CJC needed an overarching communications strategy setting out the key messages, audiences, to support the CJC in its work. Jo Gordon, Judicial Office, introduced the draft communications strategy to the Council for discussion.

In discussion, the Council agreed that the updated web-site provided a good platform for getting its message across and improving transparency. Jo informed that while Judicial Office would provide support, the Council and Secretariat needed to consider what resources were needed to deliver the strategy in particular whether a communications budget was needed. In planning a new project, it was important that communications for example, key messages and target audiences. It was agreed that the Executive Committee would play an important in overseeing the strategy.

7. Executive Committee Update

The EC update was noted. The Master of the Rolls drew the Council's attention to the penultimate item on the Administrative Justice and Tribunal Council. In response to the Public Bodies Bill, the Senior President of Tribunals (SPT) had proposed that the Civil Justice Council should take on some of the functions of the AJTC. Members shared the EC's concerns that the Council was not properly resourced to do this as the AJTC was a much larger organisation with different functions and structures. The MOJ response to the SPT's proposal was awaited.

Working Party Updates

8. Third Party Funding Code

The Council was asked to consider a draft of the Third Party Funding Code and Articles of Association of Third Party Funders prepared by the TPF Working Party chaired by Mike Napier. Members were informed that there were a number of issues to be resolved in particular whether the Code should apply to all TPFs; the TPF representatives on the WP had argued for the Code should be restricted to commercial litigation. Council members suggested further amendments for consideration by the WP.

9. Technical Aspects of Jackson

The Council was asked to consider revised draft chapters on Qualified One-Way Cost Shifting, Part 36 and Proportionality prepared by the Working Party chaired by Alistair Kinley. In his absence, David Marshall attended the meeting to answer questions; Members made a number of observations which were noted. The Council was informed that the (revised) documents would be discussed at an Experts Workshop hosted by the CJC to be held on 31 October; this would be attended by the Master of the Rolls and Jonathan Djanogly. Following this, it was intended that WP leads would meet to consider whether further amendments were necessary before submitting final documentation to the MOJ.

10. Predictable Damages

Peter Smith, Chair, informed the Council that it has not been possible for the members of the PDWG to reach agreement as to best way to meet the Terms of Reference. Conflicting views on many issues have led to progress of the PDWG stalling. In view of this it was agreed not to proceed at this time.

11. Pre-Action Protocols

HH Graham Jones, Chair, informed the Council that following a meeting with representatives of the PLA (Property Litigation Association), a final draft version of the Dilapidations Protocol had been submitted to the CPRC for approval. Work on revising the general Practice Direction for all Protocols was to commence shortly.

12. a) ADR Handbook

Tim Wallis reported that negotiations with publishers were on-going.

b) ADR Education

The Council noted that the EC had approved a bid of £2,500 to fund research into judicial and litigants' experience of case management in relation to the encouragement of ADR.

AoB

The Council noted that the MOJ has issued a consultation on the Aarhus Convention; the consultation was due to end on 18 January 2012. The MOJ would advise the Council how it might assist in further work in due course.

Chris Morris-Perry
Assistant Secretary